

MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE
THIRD MEETING: OCTOBER 8 - 10, 1992
FORT LAUDERDALE, FL

The third meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Acting-Chair Rachel Craig at 9:00 a.m, Thursday, October 8, 1992, at the Sheraton Yankee Trader Hotel, Fort Lauderdale, Florida. The following Review Committee members, staff, and others were in attendance:

Members of the Review Committee:

Ms. Rachel Craig, Acting-Chair
Dr. Jonathan Haas
Mr. Dan Monroe
Ms. Tessie Naranjo
Dr. Martin E. Sullivan
Mr. William Tallbull
Dr. Phillip L. Walker

National Park Service staff present:

Dr. Francis McManamon, Departmental Consulting Archeologist
Dr. C. Timothy McKeown, NAGPRA Program Leader
Mr. Hugh (Sam) Ball, Archeologist

The following were in attendance during some or all of the proceedings:

Dr. Glen Doran, Florida State University
Dr. Edward Friedman, Bureau of Reclamation, Denver
Ms. Betty Hall, Ballowe Reporting Service
Mr. Lars Hanslin, Solicitor's Office, Department of the Interior, Washington
Mr. Wayne Prokopetz, Bureau of Reclamation, Salt Lake City
Ms. Lana Thompson, Lake Worth, Florida

Dr. McManamon advised the Committee that notice of the meeting had been published in the *Federal Register* and confirmed that a quorum of members was present. Ms. Craig, Acting Chair, requested that each committee member and each member of the public introduce themselves. Ms. Naranjo summed up the sentiments of several other members when she said that she was glad to be at the meeting and was glad to see the "humanity that's part of our Committee."

Draft 4 of the Proposed Implementing Regulations

Ms. Craig asked Dr. McManamon to introduce discussion of Draft 4 of the implementing regulations. Dr. McManamon explained that the primary reason for having the meeting so soon after the August meeting was to get proposed regulations out for public comment as quickly as possible. He complimented the Archeological Assistance Division staff and Mr. Hanslin of the Solicitor's Office for their efforts in arranging the meeting and completing Draft 4. He noted that the current draft was thinner and had been

reorganized. He also noted that certain sections were listed as "reserved," because these sections were not essential for basic implementation of the statute and either were not fully thought out, or might be considered contentious and could hold up completion of the core provisions.

Dr. Haas expressed some frustration that many of the points which he thought had been settled during the previous meeting's discussion of the memorandum on summaries and inventories had not been included in Draft 4. Dr. McKeown responded by recounting his efforts since the August meeting. His first step had been to delete the summary and inventory sections of Draft 3 and substitute the appropriate sections from the memorandum. He also deleted or significantly reduced several other sections on the basis of Committee recommendations at the August meeting. The revised document was then sent to Mr. Hanslin for review. Redrafting and editing continued until October 5, 1992, when the draft was sent to the Committee. Mr. Hanslin apologized for any substantive changes he may have made during his legal editing and suggested identifying those changes to see if they could be put back to their original form.

Mr. Monroe questioned the current organization of the draft. Mr. Hanslin outlined the present four subpart structure: Subpart A contains sections on purpose, applicability, definitions, and consultation principles; Subpart B deals with collections; Subpart C deals with excavations and discoveries; and Subpart D contains sections of general applicability. Mr. Monroe suggested reordering the subparts to more accurately mirror the statute, particularly reversing the order of Subparts B (collections) and C (excavations).

Dr. Haas questioned the need for a separate section in Subpart A to deal with Consultation Principles. Mr. Hanslin responded that this section was included to emphasize that consultation is a central aspect of the regulations although it is not legally necessary. Dr. Haas also questioned combining summary and inventory consultation processes into one section when the two processes are quite different. Mr. Hanslin indicated it would not be a problem to insert specific consultation procedures into the sections on summaries and inventories and to delete the general consultation section in the collections subpart.

The Committee then began a section-by-section review of the draft. The section numbers given in italics refer to the October 5, 1992 version.

Subpart A-Introduction

§ 10.1 Purpose and Applicability

Dr. McManamon suggested inserting a sentence stating that these regulations apply to human remains and cultural items which are indigenous to Alaska, Hawaii, and the continental United States, but not to United States' territories.

§ 10.2 Definitions

"Federal agency" [§10.2 (a)(4)]. Mr. Monroe asked for clarification of the term "instrumentality." Mr. Hanslin explained that it is a statutory term meaning any entity, beyond an individual, which receives Federal funds.

"Museum" [§10.2 (a)(6)]. Dr. Haas pointed out that restating the statutory exclusion of the Smithsonian Institution gave the impression that it was excluded by the regulations. He suggested adding a phrase making it explicit that this exclusion was "established by the Act." Mr. Hanslin stated that it was not really necessary to include the exclusion line at all, and suggested its deletion.

Mr. Hanslin went on to explain that the definition of "museum" had been expanded to include an explanation of the term "receives Federal funds." This clarification mirrors language in Title 6 of the Civil Rights Act, with the exception that NAGPRA specifies the receipt of Federal funds instead of Federal assistance, which also includes non-monetary benefits. Mr. Monroe asked for clarification on how direct the connection must be between the Federal government and a particular museum in order for provisions of NAGPRA to apply. Mr. Hanslin responded that if a museum is part of a State or local government or a private university and the State or local government or private university receives Federal funds for any purpose, the museum is considered to receive Federal funds.

Dr. Walker asked why the statute applies to only those institutions receiving Federal funds after November 16, 1990. Mr. Hanslin explained that the statute could not retroactively apply to institutions that have received, but no longer receive Federal funds.

Dr. Haas raised the question of whether provisions of the statute will apply to museums that receive Federal funds after the November 16, 1995 deadline for completion of inventories. Mr. Hanslin explained that this issue is not mentioned in either the statute or the legislative history. Dr. McManamon added that a similar issue relates to museums that receive cultural items after the November 16, 1995 deadline.

Mr. Monroe asked whether the statute applies to Indian Tribal museums. Mr. Hanslin indicated that all museums receiving Federal funds after November 16, 1990 are required to comply with the summary and inventory provisions of the statute.

"Indian Tribe" [§10.2 (a)(9)]. Dr. Haas questioned defining "Indian Tribe" to include only those Indian Tribes recognized by the Bureau of Indian Affairs. He understood the definition was meant to be more encompassing. Mr. Monroe added that the statutory definition states "any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native Village." Dr. McKeown explained that the crucial provision of this definition is the phrase "recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians," which is verbatim from the Indian Self-Determination Act. In fact, the July 10, 1990, version of H.R. 5237, the bill that eventually became NAGPRA, simply says "Indian Tribe shall have the same meaning given that term in Section 4 of the Indian Self-Determination and Education Act." The Secretary of the Interior has interpreted that definition in the Indian Self-Determination Act to mean those Indian Tribes that are recognized by the Bureau of Indian Affairs. Mr. Hanslin added that Congress knew how the "Indian Tribe" was being interpreted in the Indian Self-Determination Act when they passed NAGPRA. Further, there is not one word in the legislative history which indicates that they meant anything beyond that. After a general discussion of various options to deal with this dilemma, Dr. Walker suggested that the definition be expanded to include the Bureau's criteria for recognition as required under 25 CFR, Part 83.

In recognition of the discomfort felt by some members of the Committee regarding this definition, Dr. McManamon reminded the Committee that they are required to submit an annual report to Congress that

deals, in part, with any barriers encountered in implementing the statute. The Committee may wish to recommend a legislative change to broaden the definition of "Indian Tribe."

"Traditional Religious Leader" [§10.2 (a)(13)]. Dr. Haas questioned whether traditional religious leaders should be recognized by "members of that Indian Tribe" as being responsible for performing cultural duties, or if recognition should be from the Indian Tribe as a whole. Dr. McKeown explained that the "members of" clause had been used in recognition that in some Indian Tribes the political leadership and the religious leadership are divided. Mr. Tallbull stated that the Northern Cheyenne Cultural Commission, of which he is chairman, was founded to begin bridging this gap between political and religious leadership. Ms. Naranjo added that for many Pueblo people it is a bit presumptuous for the statute to require museums and Federal agencies to contact traditional religious leaders. At Santa Clara, no one knows who the traditional religious leaders are except the people in the community. Ms. Craig noted that in Alaska this process will be a little more complicated since each village might have an Indian Reorganization Act Council, an Elders Council, and a Regional Council. Mr. Hanslin recommended deleting "members of" from the sentence.

"Lineal Descendant" [§10.2 (a)(14)]. Dr. Haas suggested revising the definition to specify that ancestry be traced by means of the traditional kinship system of the appropriate Indian Tribe. Dr. Walker expressed some misgivings with this approach, indicating that it may "open a can of worms." Mr. Hanslin indicated that he considered such a change to be lawful, but that this sort of "cultural overlay" may lead to more spurious claims and more litigation than might otherwise occur.

"Human Remains" [§10.2 (b)(1)]. The definition of human remains, and in particular the status of scalps, was extensively discussed at the Committee's previous meeting but was eventually tabled due to Mr. Tallbull's absence.

Dr. Haas asserted that one of the biggest issues faced by the Committee concerned whether human remains that had been incorporated into other objects, such as scalp shirts or finger bone necklaces, should be dealt with as part of the summary or as part of the inventory. Mr. Monroe objected to including scalps as human remains due to the burden it would place on museums to do an item-by-item inventory of all items that contain scalps. Ms. Naranjo and Mr. Tallbull considered the scalps on a shirt to be culturally affiliated with the Indian Tribe that made that shirt. Dr. McKeown proposed amending the definition to include the following statement: "For the purpose of determining cultural affiliation, human remains incorporated into a cultural item shall be considered as part of that cultural item." Dr. Haas pointed out that treating human remains as cultural items would mean Indian Tribes would have to demonstrate that the particular item was an unassociated funerary object, sacred object, or object of cultural patrimony before it could be repatriated. This approach would also have implications for determining ownership. Dr. Sullivan noted that he was unaware of any Indian Tribe seeking repatriation of scalps from shirts culturally affiliated with another Indian Tribe. He was worried about making explicit the distinction between the cultural affiliation of the shirt and the cultural affiliation of the scalps before everyone has time to sort out these issues for themselves. Ms. Craig reminded the others that no matter how this issue is resolved, human remains should be treated with dignity. Dr. Haas suggested going ahead with the proposed amendment with the expectation that there will be a great deal of comment from museum curators and art dealers. Mr. Tallbull spoke about medicine bundles which contain human remains. He explained that someone had to have made each bundle. The maker had a teacher who gave instructions

to collect this plant, this scalp, this skull. The collected objects together became a medicine bundle which belonged to the person who made it.

"Cultural Affiliation" [§10.2 (c)]. Mr. Monroe found the definition confusing. Dr. McKeown explained that the present form was an attempt to deal with the Committee's objection at their first meeting to having present-day individuals related to objects instead of to other individuals. Mr. Monroe proposed deleting everything after the colon. Dr. Walker concurred.

"Tribal lands" [§10.2 (d)(2)]. Dr. Haas asked for clarification of the status of allotments. Mr. Hanslin suggested amending the definition to read "'Tribal lands' means all lands, excluding privately owned lands, which: (i) are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States." Ms. Craig concurred.

"Summary" [§10.2 (e)(2)]. Dr. Haas suggested changing the definition to read "'summary' means the written description of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony required by § 10.4 of these regulations." This definition reflects the Committee's discussion at their Denver meeting.

"Intentional excavation" [§10.2 (e)(4)]. Dr. Walker questioned inclusion of the phrase "in an archeological context." Mr. Hanslin explained that the phrase, which was also included in the definition of "inadvertent discovery" [§10.2 (e)(5)], was intended to limit potential Fifth Amendment taking problems related to the "discovery" of privately owned cultural items in the trunk of someone's car while on Federal or Tribal land. Dr. McManamon proposed replacing the phrase with "under or on the surface."

§ 10.3 Consultation Principles

Dr. Haas questioned whether this section takes the requirements for consultation somewhat beyond what is mandated by the law. Dr. McManamon explained that the content and placement of this section was designed to emphasize the importance of consultation to the entire protection and repatriation process and suggested that the Committee direct their comments to any specific provisions which overstep legislative intent. The section was eventually deleted.

Subpart B-Human Remains and Cultural Items in Museums and Federal Collections

Dr. McManamon reminded the Committee that this subpart will be redesignated as Subpart C.

§ 10.4 Summaries

General [§10.4 (a)]. Dr. McKeown proposed amending this paragraph to emphasize that the summary is of "collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony." Mr. Hanslin proposed inserting a sentence stating that the section implements Section 6 of the statute.

Notification [§10.4 (b)(4)]. Mr. Hanslin explained that this section was inserted to meet the due process requirements of the law. Mr. Monroe objected that in its present form, museums would have to complete an inventory of all collections claimed by an Indian Tribe instead of just those that were to be repatriated. Dr. Haas suggested changing this to a Notice of Intent to Repatriate that covers only those items that the museum or Federal agency is prepared to repatriate. Mr. Hanslin concurred. Mr. Monroe suggested that some museums or Federal agencies might use this step to try circumventing the law by having another Indian Tribe waiting in the wings to challenge the repatriation. Mr. Hanslin admitted that may happen, but that the Notice of Intent to Repatriate would not be the most efficient time to do it. The Notice is intended to protect museums and Federal agencies from being held liable for an object which has already been repatriated.

§ 10.5 Inventories

Notification [§10.5 (d)(1)]. Dr. Haas asked whether it was necessary to require that the Notice of Inventory Completion be sent by certified mail. Mr. Hanslin indicated that there is no legal requirement that it be certified, although doing so would certainly be in a museum or Federal agency's best interest. Dr. Sullivan suggested deleting the line. Mr. Hanslin suggested inserting a sentence stating that the section implements Section 5 of the statute.

Dr. Walker asked at what point a museum or Federal agency was locked into the NAGPRA process. Dr. McManamon answered that the NAGPRA procedures went into effect on November 16, 1990, and any museum which failed to follow the statutory provisions would be potentially liable. Mr. Hanslin added that some museums and Federal agencies are repatriating things without the required notification in the *Federal Register*. He pointed out that the notice serves as the key to cutting off claims. Without it the museum or Federal agency is at risk of being sued, perhaps years later, for failing to comply with the law. Dr. Walker indicated that this aspect of the law is not generally known.

Electronic Format [§10.5 (d)(4)]. Mr. Monroe suggested that many small museums would not be able to provide information in an electronic format. Dr. McKeown reminded the members that the NPS staff is required to monitor inventories and keep the Committee appraised. It will be easier for each individual museum to put their inventory in an electronic format than it will be for the staff to deal with several thousand inventories in printed form. Dr. Haas suggested adding: "Information on the proper format for electronic submission and suggested alternatives for museums unable to meet these requirements are available from the Departmental Consulting Archeologist."

Completion [§10.5 (e)]. Mr. Monroe questioned the meaning of the term "good faith", which was not defined in the statute or in the draft regulations. He wondered whether initiating one consultation and preparing a written plan by the five year deadline should be accepted as a good faith effort to comply with the statute. Dr. Haas indicated that given the fact that regulations are not yet in place and the grant program not yet funded, this minimum standard may well constitute a good faith effort for some small museums. Mr. Hanslin pointed out that the statute reads "good faith effort as determined by the Secretary." It would be possible to list additional factors the Secretary will consider in assessing that effort. Dr. Haas suggested adding "institutional resources" as one of the factors to be considered by the Secretary. Mr. Monroe objected and instead proposed adding language stating that a good faith effort shall "include, but not be limited to," an initiation of active consultation and the development of a written plan.

§ 10.6 Consultation

Dr. McManamon reminded the Committee of previous discussions dealing with § 10.3 and the possibility of having separate consultation sections for summaries and inventories. Dr. Haas proposed the use of two sections in order to make it clear that consultation is required in both cases. Mr. Monroe agreed that this strategy would be more effective, though less efficient. Dr. Sullivan concurred. Dr. Haas also suggested including the kinds of cultural items considered unassociated funerary objects within the information requested from Indian Tribes. The section was deleted.

§ 10.7 Repatriation

Dr. Haas objected to the first sentence of § 10.7 (a), stating that it downplayed the importance of the numerous exceptions, and suggested moving § 10.7 (c) to the front of the section. Mr. Hanslin explained that the exemptions had been placed at the end since some of them applied to both human remains and associated funerary objects and to unassociated objects, sacred objects, and objects of cultural patrimony. Dr. Walker objected to inclusion of any discussion of "right of possession" when dealing with human remains.

Mr. Monroe suggested restructuring the subsection to make explicit the repatriation process. Dr. Haas volunteered to draft the revision and later returned with two separate subsections. § 10.7 (a) was rewritten to include criteria for repatriation, right of possession, and notification provisions for unassociated funerary objects, sacred objects, and objects of cultural patrimony. Criteria for repatriation included: (i) the object meets the definitions; (ii) cultural affiliation is determined; (iii) a lineal descendant or Indian Tribe presents evidence that the museum or Federal agency does not have right of possession; (iv) the museum or Federal agency fails to present evidence proving it has right of possession; and (v) none of the specific exemptions apply. Right of possession was defined using the statutory text. Finally, notification provisions were listed. § 10.7 (b), dealing with the repatriation of human remains and associated funerary objects, was structured in a similar fashion, except that the definition and provisions for documenting right of possession were omitted. Dr. Haas also suggested that § 10.7 (g) on Standard of Proof be deleted, as it had already been inserted under §10.7 (a). Mr. Hanslin added that § 10.16 (a) on Right of Possession should also be deleted.

Dr. McManamon suggested reserving a section to deal with the statute's future applicability. In particular, he suggested that the section should consider the issue of museums which receive Federal funds after the deadlines for summary and inventory completion and the issue of cultural items added to collections after the deadlines. Mr. Hanslin pointed out that the statute does not address either point and to be legal any additional provisions must be within the reasonable scope of implementation of the law. Dr. Sullivan added that he interprets the statute as creating a standard in perpetuity rather than a one-time exchange of information.

Subpart C-Human Remains and Cultural Items Recovered from Federal or Tribal Lands

Dr. McManamon reminded the Committee that this subpart will be redesignated as Subpart B.

§ 10.10 Intentional Excavations

Procedures [§ 10.10 (c)]. Dr. Walker questioned the requirement that "any person who believes" a planned activity on Federal land may result in excavation of human remains or cultural items shall notify the responsible Federal official, noting that there could be thousands of people who might believe such a thing is going to occur. Mr. Hanslin acknowledged that "any person" had come from the inadvertent discovery section and agreed to change this section to read "Any person who proposes to undertake an activity..." Mr. Hanslin suggested inserting a sentence stating that the section implements Section 3 (c) of the statute.

Dr. Walker was concerned that Federal agency officials might "hide in their offices" in order to avoid learning about the possibility of encountering human remains or cultural items. Dr. McManamon stated that such activity would probably land the particular Federal agency official in court. Dr. Walker suggested including a sentence indicating that Federal agency officials shall take reasonable steps to determine whether a planned activity, of which he or she has received notice or otherwise is aware, may result in the excavation of human remains or cultural items from Federal lands. Dr. McManamon concurred.

Dr. McManamon suggested further specifying the contents of the notice to Indian Tribes to include "the Federal agency's proposed treatment of any human remains or cultural items that may be excavated, and the proposed disposition of any excavated human remains or cultural items."

Dr. McManamon suggested inserting a subsection to further ensure coordination of NAGPRA provisions with other planning activities. He proposed § 10.10 (c)(3) to read: "If the planned activity is also subject to review under Section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), the Federal agency official should coordinate consultation and any subsequent agreement for compliance conducted under that Act with the requirements of § 10.3 (c)(2) and § 10.5 of these regulations. Compliance with these regulations does not relieve Federal officials of requirements to comply with Section 106 of the National Historic Preservation Act (16 U.S.C. 470 *et seq.*)."

§ 10.11 Inadvertent Discovery

Federal Lands [§ 10.11 (d)(2)]. Mr. Monroe asked about the requirement that Federal agency officials must notify, within one working day, known Indian Tribes that are likely to be culturally affiliated with discovered human remains or cultural items. He reminded the Committee that numerous comments were received on Draft 3 related to this point. Mr. Hanslin explained that the short time-frame had been used because the thirty-day stoppage of activities in the area of inadvertently discovered human remains or cultural items begins when the Federal land manager receives notice and, without some type of deadline, the official could wait the entire thirty days before notifying the Tribe of the discovery. Dr. McKeown explained that an earlier draft had specified notification must occur within twenty-four hours, but weekends and holidays needed to be taken into account. Mr. Hanslin suggested inserting a sentence stating the section implements Section 3 (d) of the statute.

§ 10.12 Consultation

Written Agreement [§ 10.12 (f)]. Dr. McManamon explained that this subsection, as it was originally drafted, imposed a requirement on Federal agency officials and Indian Tribe officials to develop a binding agreement. He explained that such an agreement, although a laudable goal, is not required by the statute.

He proposed renaming the document a Written Plan of Action which includes a provision specifying the treatment, care, and handling of any human remains or cultural items recovered; steps to be followed in contacting Indian Tribe officials; and the kind of traditional treatment to be afforded the human remains or cultural items.

§ 10.13 Ownership and Disposition

Dr. McManamon explained that the subsection's criteria for determining priority of ownership had been revised to explicitly reflect the statutory language, as requested by several individuals in comments on Draft 3.

Dr. Haas objected to the thought expressed in the last line of § 10.13 (b) that human remains would be "disposed." Mr. Hanslin suggested replacing the term with "transfer ownership or control" and deleting the term "disposition" from the section title.

§ 10.14 [Reserved-Disposition of Unclaimed Human Remains].

Dr. McManamon explained that this section was reserved for procedures for the disposition of unclaimed human remains.

Subpart D-General

§ 10.15 Lineal Descent and Cultural Affiliation

Dr. Haas proposed amending the criteria for determining lineal descent to bring them in line with the previously changed definition. Dr. McKeown supported Dr. Haas' suggestion, explaining that inclusion of a reference to a traditional kinship system would help to ensure a group-specific method for determining who should receive cultural items. Mr. Tallbull supported this change.

§ 10.16 Right of Possession, Disposition Limitations and Remedies.

Dr. Sullivan suggested retitling this section "Repatriation Limitations and Remedies" to bring it into line with previous changes. Mr. Hanslin also suggested deleting § 10.16 (a) Right of Possession, as this subsection had already been moved to § 10.7. Mr. Hanslin proposed retitling § 10.16 (b), "Repatriation Limitations", and deleting the reference to right of possession in order to make it clear that Congress did not intend any Fifth Amendment takings from museums to occur. He explained that, unfortunately, the statute leaves the takings issue a bit ambiguous.

Dr. Haas raised the issue of the lack of a statute of limitations in the subsection on Failure to Claim. He pointed out that this omission effectively puts a museum's entire North American collection in perpetual uncertainty since its title will remain clouded. Dr. McKeown pointed out that a statute of limitations had been discussed by Congress but not included in the final statute. Dr. Sullivan suggested reserving a section to deal with this issue.

Election of the Committee Chair

Following discussion of Draft 4 of the implementing regulations, Ms. Craig asked the Committee to consider election of a Chair for the next year. Dr. McManamon explained that a full-time Chair was necessary both to facilitate meetings, and between meetings, to serve as the Committee's primary liaison with the Departmental Consulting Archeologist. Mr. Monroe reminded the Committee that at the Denver meeting the members had asked Ms. Naranjo to consider taking on the responsibilities of the position. Ms. Naranjo responded that, although she didn't like to be called conservative - she would rather be called Pueblo, after a month of consideration on the "new shoe" she was about to buy, she had decided that if it was the consensus of the rest of the Committee to reinvite her, she would accept the position.

Dispute Resolution Procedures

Dr. McManamon introduced the Draft Dispute Resolution Procedures for review by the Committee. He explained the various steps of the process: receipt of a request; decision by the Departmental Consulting Archeologist and the Committee Chair that review of the dispute is appropriate; placement of the dispute on the Committee's agenda; review of the facts of the dispute by the Committee; issuance of a recommendation; and the possible resubmission of the dispute for further consideration and issuance of a finding. Dr. Sullivan suggested that the Committee be very careful to avoid taking on a "Dear Abby" role of giving advice to people who do not know what to do. Mr. Monroe pointed out that each member of the Committee would probably be approached individually and asked to deal with disputes. He stressed the importance of a clear explanation that an opinion given by an individual Committee member is a personal opinion and does not represent the opinion of the Committee. Mr. Tallbull cautioned the members to be extremely careful with the press. "Someone from the press will call and ask your opinion, and when it appears, the group that doesn't like what you said will be down at the trading post buying 30-30 shells."

Future Activities

Dr. McManamon updated the Committee on the status of several items.

Memorandum on Summaries and Inventories

With Committee review of the Draft Proposed Regulations completed, Dr. McManamon indicated that he was prepared to submit the memorandum to the Department of the Interior for review. He anticipated that, without any unforeseen problems, the memorandum might be out by the end of the year.

Proposed Regulations

Dr. McManamon indicated that based on the Committee's review and comment, he was prepared to submit the current draft as proposed regulations for publication in the *Federal Register*. This process would entail drafting a preamble explaining some of the decisions the Committee had made regarding definitions and procedures, review of the entire package within the Department of the Interior, obtaining an exemption to the President's regulatory moratorium, and review by the Office of Management and Budget. The regulations would then be published in the *Federal Register* for public comment.

Reserved Sections

Dr. McManamon explained that several section had be "reserved" in the draft regulations. These sections would appear in the proposed regulations as a title with no text. He explained that this is a way to identify issues and procedures that are recognized as being necessary, but for which there was either not enough time to complete or were not considered essential at this time. Dr. Sullivan inquired about the reserved section on civil penalties, particularly a statement in an earlier draft indicating that museums which failed to comply with the statute risked the loss of Federal funding. Dr. McKeown explained that Mr. Hanslin's opinion was that such a penalty was not mentioned in the statute or the Committee reports. Mr. Monroe asked that it be communicated to Mr. Hanslin, who had left the meeting, that he understood the civil penalties were intended to be substantive and that he was against any effort to water them down. He went on to state that he was opposed to any approach that tried to assess civil penalties on the basis of monetary or market value. There were no objections from the Committee.

Hui Mālama and Hearst Museum Dispute

Dr. McManamon outlined the chronology of events related to the dispute. In September, 1992, *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei*, a Native Hawaiian organization recognized by the statute, submitted a formal request to the Committee to consider their dispute with the P.A. Hearst Museum at the University of California-Berkeley. Dr. McManamon consulted with Ms. Craig, in her role as acting Chair, to decide whether the Committee should consider the dispute. They both agreed that the dispute should be considered by the Committee. On September 24, 1992, Dr. McManamon notified both Hui Mālama and the Hearst Museum, and asked them to submit written statements by the beginning of November. The plan is for the NPS staff to review the written statements, discuss them with the Chair, and move forward from that point. The dispute may end up on the agenda for the next meeting.

Grants

Dr. McManamon indicated that the American Association of Museums, the Native American Rights Fund, the Society for American Archaeologists, and other organizations were working as a coalition of Native American, museum, and scientific organizations to meet with various members of the administration and of Congress to lobby for an appropriation for the grants program authorized in the statute. Mr. Monroe urged members of the Committee to go on record in support of the grants program and to convey that opinion directly to the Secretary of the Interior. Dr. Haas agreed with this suggestion, adding that the Committee should also voice their concern to the Congressional appropriations committees and various members of Congress. Mr. Monroe and Dr. Haas agreed to draft a letter from the Committee to the appropriate members of the Administration and Congress.

Information Clearinghouse

Dr. McManamon explained that the Archeological Assistance Division was beginning to serve as a point of contact for Indian Tribes, museums, Federal agencies, and other interested parties who wish to find out about implementing the statute. AAD has put together a mailing list for all Federally recognized Indian Tribes. The longer range goal, he explained, was to provide this type of information as an on-line computer system, as well as through traditional paper form. He requested the Committee members provide him with contacts or networks that they felt should be included. Dr. Haas asked that information

also be gathered regarding what different groups consider to be sacred objects and objects of cultural patrimony.

Upcoming Meetings

Dr. McManamon suggested that the Committee consider establishing a regular meeting schedule and tentatively assign locations for next year's meetings. The first meeting of 1993 was tentatively scheduled for late January in Hawaii to consider the dispute between *Hui Mālama I Nā Kūpuna 'O Hawai'i Nei* and the P.A. Hearst Museum, as well as other aspects of implementing the statute in Hawaii. The second meeting was tentatively scheduled to follow the close of the comment period for the proposed regulations - possibly in May or June -- in order to expedite moving from proposed to final regulations. The Committee expressed interest in holding this meeting in the Plains states. The Committee also expressed interest in holding the third meeting in conjunction with the annual meeting of Keepers of the Treasures, scheduled for October, 1993.

Public Comment

Mr. Wayne Prokopetz, from the Bureau of Reclamation (BOR) in Salt Lake City, Utah, spoke about BOR's attempts to implement NAGPRA as part of the Animas-LaPlata Project located in Southwest Colorado. BOR was recently enjoined from doing any archeological work beyond mapping until consultations were completed with 21 Pueblos, the All Pueblo Council, the Navajo Nation, the Ute Mountain Ute, and the Southern Ute. The process has been disrupted due to conflicts between the various Tribes. Mr. Hanslin stated that this situation points out the necessity of getting the regulations finalized as quickly as possible, because currently, U.S. District judges can read the law any way they choose. There are no prior cases and no regulations to guide them.

Dr. Glen Doran, an anthropologist from Florida State University and the President of the Florida Archeological Council, addressed the Committee. He voiced concern about the definition of Indian Tribe official which, he believes, is based on the assumption that one individual in each Indian Tribe has been charged with dealing with these kinds of issues. He pointed out that a recent questionnaire to eighty Indian Tribes garnered only about a 35-40% response rate, and that some of those replies consisted of "I don't need to tell you this information, we will take care of it." Dr. Haas responded that he understood it to be the Indian Tribe's responsibility to respond to the museum and Federal agency consultation attempts. Dr. Doran also indicated that he felt the one working-day requirement for notification of an inadvertent discovery was not enough time. Dr. Edward Friedman, a BOR Historic Preservation Officer, commented that the National Historic Preservation Act regulations call for a 72-hour deadline for the initiation of consultation. Dr. McManamon pointed out the situations are somewhat different, however, in that there is no 30-day clock ticking during the NHPA process. Dr. Doran asked whether there were some situations in which the Committee might ask Congress to amend the statute. Mr. Monroe answered that it was conceivable, but that there seemed no intent on the part of the Committee to engage in that process at this point.

Ms. Naranjo asked Dr. Haas to provide a closing invocation or "good saying." Dr. Haas gave thanks for everyone's safe travel to the meeting, for the good work they had accomplished, and for the help the Committee had received from their friends from the National Park Service. He also wished that the Committee could continue their work in good spirit, that their families would understand what they were

doing, and, on the 500th anniversary of Europeans in the New World, that the next 500 years would be better than the last. He ended by saying that he thinks a lot about his family when he is away from them, but that it is very nice to have another family in the Committee.

The meeting was adjourned by Ms. Naranjo at 1:30pm on Saturday, October 10, 1992.

Approved:

/S/ Tessie Naranjo
Tessie Naranjo, Chair
Native American Graves Protection
and Repatriation Review Committee

Date